IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

RSA No.3 of 1996

Reserved on 11.6.2007

Date of decision 6.8.2007

Smt.Dugli Devi and others	Appellants
Versus	
Balak Ram and others	Respondents

Coram:

The Hon'ble Mr.Justice Rajiv Sharma, Judge.

Whether approved for reporting?[1] No.

For the Appellants: Mr.K.D.Sood, Advocate.

For the Respondents: Mr.Bhupender Gupta, Senior Advocate, with Mr.Janesh Gupta, Advocate, for respondent No.1.

Rajiv Sharma, J.

A challenge has been laid by the appellants-plaintiffs to the judgment and decree passed by the learned Additional District Judge, Kullu dated 1.9.1995 in Civil Appeal No.41/95.

The brief facts necessary for the adjudication of the second appeal are that appellants-plaintiffs hereinafter referred to as the plaintiffs had instituted a civil suit in the court of Senior Sub Judge, Lahaul-Spiti exercising the powers of Sub Judge Ist Class, Kullu on 4.8.1992 for declaration that they were owners in possession of the land along with proforma defendants-respondents by way of inheritance and that the mutations i.e. Ex.D-1 and Ex.D-2 have no bearing on them. It was further stated in the plaint that defendant 1 be restrained from causing any interference in the ownership and possession of the appellants-plaintiffs in

[1] Whether reporter of local papers are allowed to see the judgment ? No.

the suit land in any manner. The suit was resisted by defendant-1 Balak Ram by filing a written statement alleging therein that Nathu had no male issue and all his daughters after their marriage are living in their marital houses. It was further asserted by him that he along with his wife was maintaining and looking after Nathu. It was all due to love and affection as well as services rendered that Nathu executed the Will Ex.DW2/A in his favour voluntarily.

The trial Court on the basis of the pleadings of the parties had framed the following issues:

1. Whether deceased Nathu Ram executed a valid Will dated 30.11.1983 in favour of defendant No.1?OPD-1

2. Whether the plaintiffs are owners in possession of the suit land as alleged ? OPP

3. Whether the suit is not maintainable in the present form? … OPD

4. Relief.

The trial court had recorded the following findings on the aforesaid issues:-

Issue No.1	Yes
Issue No.2	No
Issue No.3	No
Relief	Suit dismissed with costs as per operative portion of judgment.

The trial court vide judgment dated 10.3.1995 had dismissed the suit of the plaintiffs. The plaintiffs feeling aggrieved by the judgment and decree of the learned trial court dated 10.3.1995 had preferred an appeal before the learned Additional District Judge, Kullu on 10.5.1995. The learned Additional District Judge had framed the following points for determination:

Point No.1 Whether the impugned judgment and decree are liable to be set aside on the basis of material on record?

Point No.2 Final order.

The findings recorded by the learned Additional District Judge on the aforesaid points are as under :

Point No.1 No

Point No.2 The appeal is dismissed as per operative portion of the judgment.

The learned Additional District Judge had dismissed the appeal on 1.9.1995. Mr.K.D.Sood, learned counsel for the appellants had strenuously argued that the respondents had failed to prove the execution of the Will Ex.DW2/A in accordance with law and thus the judgment and decree of the learned Additional District Judge dated 1.9.1995 is liable to be set aside. Mr.Bhupinder Gupta, learned counsel for respondent No.1 had supported the judgment and decree passed by the learned Additional District Judge on 1.9.1995.

The second appeal was admitted by the Court on the following questions of law :

1. Whether Sh.Nathu, father of the appellants, had executed a valid Will Ex.DW2/A in a sound disposing mind and the suspicious circumstances obtained to the execution of the will were explained by the respondent who was the sole beneficiary under the Will to the exclusion of all the natural heirs?

2. Whether the Will which is the basic document of title has been misread and misconstrued and wrong inferences have been drawn from the facts proved on the record?

3. Whether the suspicious circumstances attacted to the execution of the Will were explained from oral evidence and the respondent could be the beneficiary of the ancestral estate of testator in exclusion of the natural heirs?

I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

All the substantial questions of law being interconnected, are taken up together.

Defendant No.1 Balak Ram is the real nephew of deceased Nathu who died on 13.2.1992. Nathu had executed a Will Ex.DW2/A on 30.11.1983. Deceased Nathu had no male issue. He had five daughters i.e. the plaintiffs and the proforma defendants No.2 and 3. At the time of execution of the Will all the daughters were married. Defendant No.1 Balak Ram had performed the last rites of Nathu. DW-2 Chuhru Ram had scribed the Will dated 30.11.1983. He had deposed that at the time of execution of the will, Nathu Ram was physically fit and mentally alert. DW-3 Tej Ram is marginal attesting witness. He is son in law of testator Nathu. He had stated that Balak Ram was looking after Nathu who was patient of asthma. He had corroborated the statement of Chuhru Ram that the Will was read over and explained to him and Nathu admitted the contents of the same to be correct and thereafter signed the Will. The fact that Nathu had executed the Will in favour of his nephew excluding his daughters cannot be stated to be a circumstance to put a question mark on the execution of the Will. Balak Ram had been looking after Nathu after the marriage of his daughters. He had performed last rites of Nathu. Both the courts have given concurrent findings upholding the validity of the Will dated 30.11.1983 on the basis of the oral and documentary evidence. The Will dated 30.11.1983 has been executed in accordance with law and there are no suspicious circumstances disbelieving the version of the defendant.

In view of the detailed discussion above, the Courts below had rightly dismissed the suit of the plaintiffs and no case for interfering with

the same in the present regular second appeal is made out, especially when no question of law much less any substantial question of law arises for determination in this appeal.

In view of the above, finding no merit in this appeal, the same is hereby dismissed.

August 6,2007(g) **(Rajiv Sharma),J.**